



SALES ASSOCIATE COURSE

CHAPTER 8

Real Property Rights



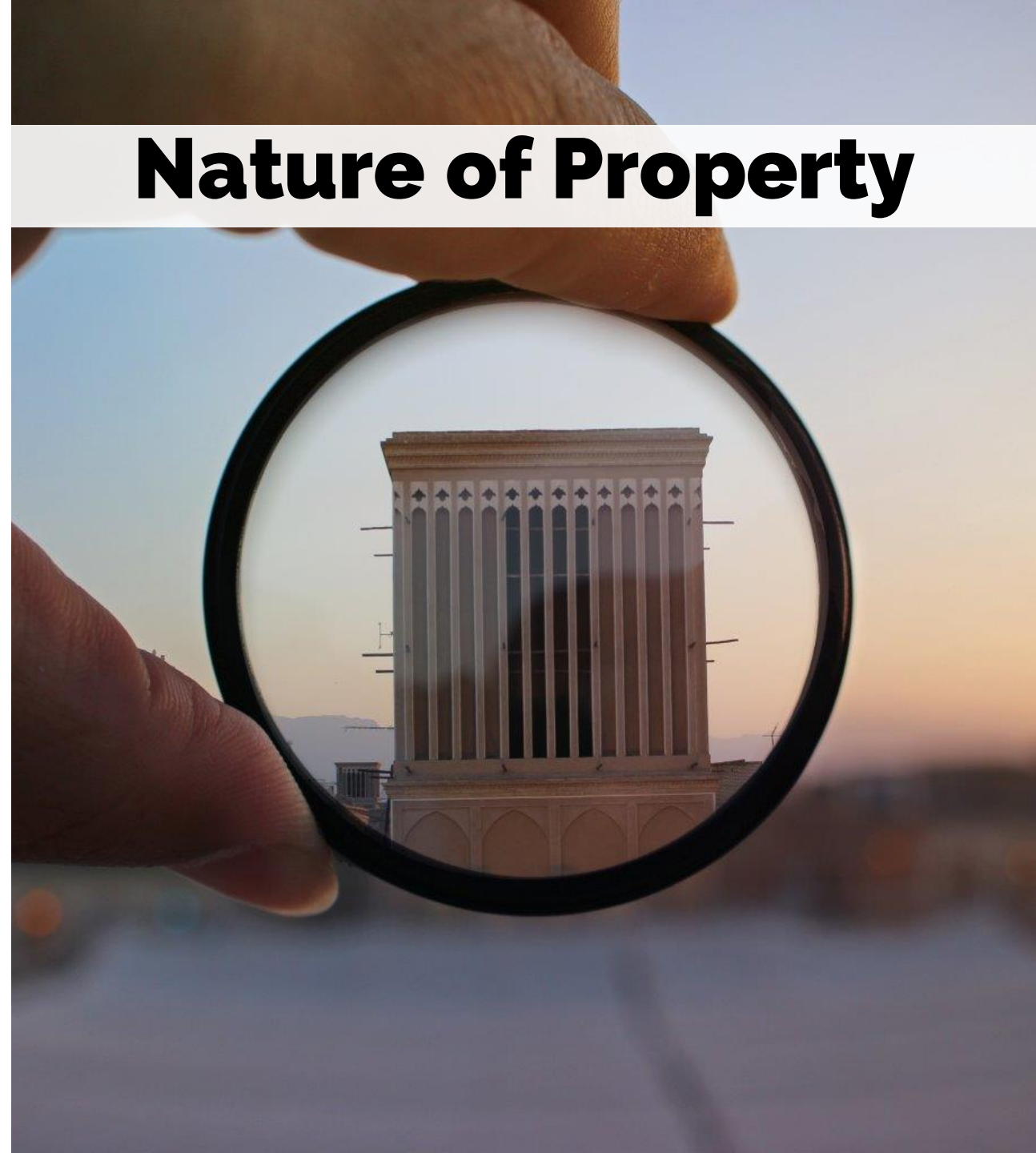
Real Estate

- Surface of the earth and all improvements (artificial things attached to the land)
- Subsurface
- Air above the surface
- Mineral deposits, wildlife, timber, fish, water and soil

Real Property

- Real estate plus the legal bundle of rights

Nature of Property





Surface Rights

Water

- Riparian Rights – Land abutting a flowing waterway - river or stream
- Littoral Rights – Land abutting non-flowing water – ocean, sea or lake

Natural process – land/water

- Erosion – loss of land due to natural forces
- Accretion – Increase of land due to natural causes
- Alluvion – Deposits of land as result of accretion
- Reliction – dry land after water recedes

Personal Property (Chattel)

- **Movable** – not attached to land or buildings
- **Fixture** – was personal property - now attached to land or building
- Tenant affixes personal property, becomes fixture – cannot remove at lease termination



A photograph of a bar interior. The wall is made of dark wood and has various items hanging on it, including a sign that says "DEC 1" and a small picture. A shelf holds several red cans with "Mojito" written on them. Below the shelf is a stainless steel service counter with a glass display case. A person is visible behind the counter. The text "Trade Fixture" is overlaid in white.

Trade Fixture

- Personal property that has been attached to real estate being used in the conduct of business
 - Not considered part of the real estate
 - Can be removed at lease termination

- Real property (Fixture) is included in the sale
- Personal property is not included with a sale
 - Unless listed in the contract.
- Disagreement as to whether an item is a fixture
 - Courts would have to determine,
 - When in doubt – Write It Out



Court Test - Fixture



Four Court Tests:

- **I**ntent - item was meant to become part of the real property
- **R**elationship - e.g. landlord/tenant or seller/buyer
- **M**ethod of Annexation - how item was installed
- **A**daptation - item designed for or necessary to nature of the property



Bundle of Rights

- Possession
- Disposition
- Enjoyment (use)
- Exclusion
- Control



**Legal Rights in
Property**



Estate and Tenancies

- Estate – extent of rights (quality & quantity)
- Estate = Tenancy (anyone who has rights in real property)
- 2 Classifications of estates:
 - **Freehold**
 - **Non-freehold** (leasehold)





Freehold Estates

- Ownership for Indefinite duration
 - **Fee Simple** – most comprehensive estate
 - **Life estate**



Fee Simple

- Most comprehensive estate
 - Absolute and complete
- Buyer receives unless contract specifies something less
- Four types of Freehold Estates
 1. Estate in Severalty
 2. Tenancy in Common
 3. Joint Tenancy
 4. Tenancy by the Entireties

A woman with long dark hair, wearing a black dress, is sitting on a wooden bench outdoors. She is smiling and looking towards the camera while using a silver laptop. The background features a lush green hedge and a paved walkway. The text 'Estate in Severalty' is overlaid in white, bold font.

Estate in Severalty

Ownership by 1 owner



Unities of Title

- **Unity of Possession –**
 - undivided shares of the property with no one joint-tenant having the right to possess the entire property
- **Unity of Interest –**
 - can be equal or unequal in duration, extent and nature
- **Unity of Time –**
 - interest must vest at the same time
- **Unity of Title –**
 - equal or unequal created by the same or different instrument

A photograph showing a person in a red shirt handing a set of keys to a person in a blue and white striped shirt. The person in the striped shirt is holding the keys in their right hand, while their left hand is open and facing up. The background is blurred.

Tenancy in Common

- Unities of title may be equal or unequal
- Includes **Inheritability** instead of survivorship
- Second most common type of ownership after legally married spouses



Joint Tenancy

- Unities of title must be equal and the same
- Must state it has the right of **Survivorship**
- Cannot leave interest in a will

- Ownership by legally married spouses
 - The marriage owns the property
 - Neither spouse owns any individually
- Includes the right of **survivorship**
- **Divorce**
 - Ownership converts to a tenancy in common



Tenancy by the Entireties

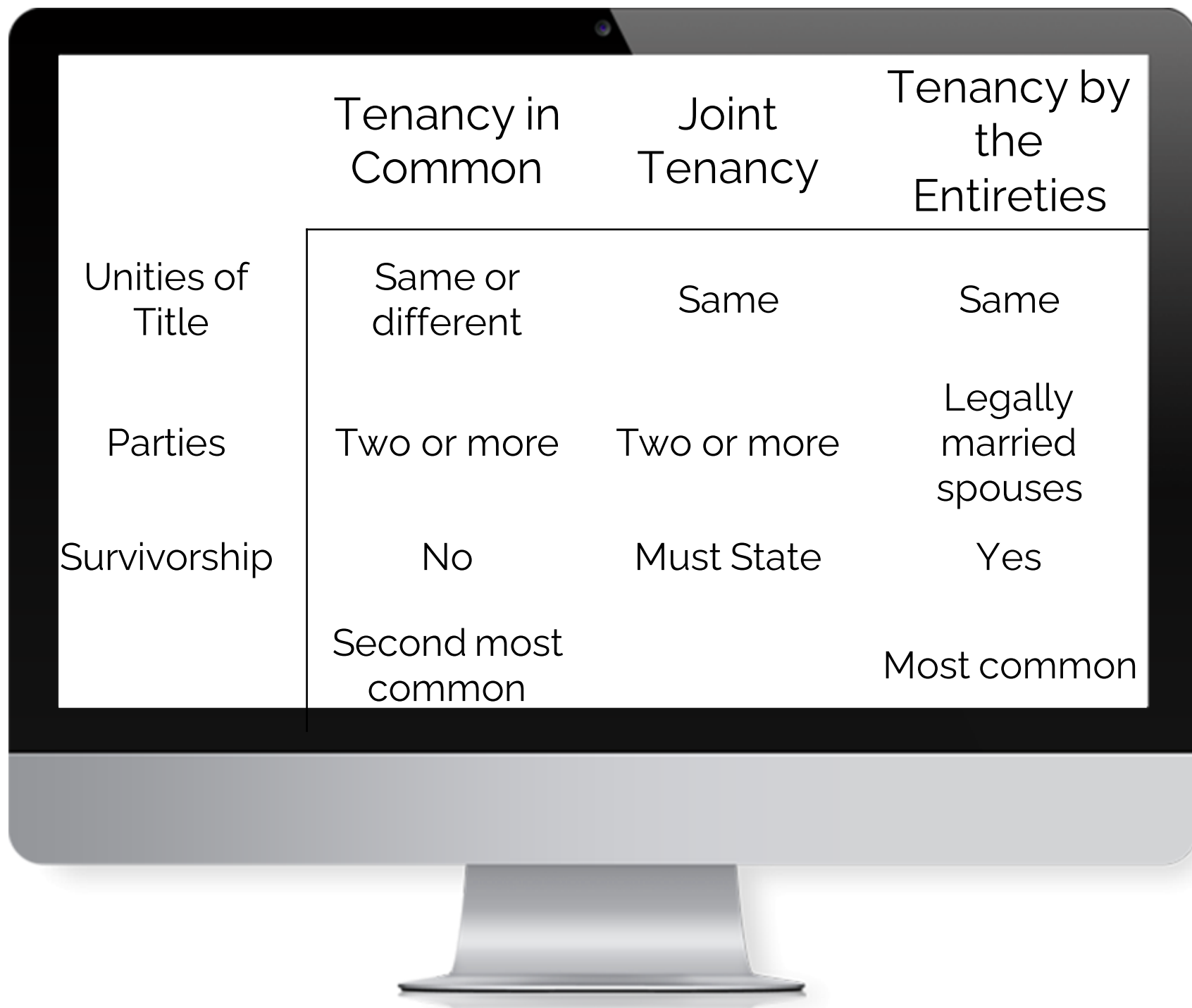


Tenancy by the Entireties

Separate property

- Married – can own property separately
- Owned by one spouse before marriage
- Acquired by gift or inheritance during marriage
- Spouse can convey without consent of other





| | Tenancy in Common | Joint Tenancy | Tenancy by the Entireties |
|---------------------|-----------------------|------------------|---------------------------------|
| Unities of Title | Same or different | Same | Same |
| Parties | Two or more | Two or more | Legally married spouses |
| Survivorship | No | Must State | Yes |
| | Second most common | | Most common |

Life Estate

- Ownership tied to duration of someone's life
- Owner must maintain the property and not permit Waste
- While the life estate exists
 - **Reversion estate** - ownership will return to the original grantor
 - **Remainder estate** - ownership will pass to a third party



Life Estate





Non-freehold or Leasehold Estates

- Not ownership – right of possession and use
- Three types
 - **Tenancy at Will**
 - **Tenancy for Years**
 - **Tenancy at Sufferance**



Non-freehold Estates

- **Tenancy at Will** - tenant has possession with the owner's permission
 - Without specific term
 - May be terminated with proper notice
 - e.g. 15 days for a month to month
- **Tenancy for Years**
 - Definite termination date
 - Created with a written lease
 - Owner has estate in reversion
- **Tenancy at Sufferance** - tenant in possession without the owner's permission
 - Holdover tenant
 - May be terminated without notice

A man with glasses and a blue shirt is sitting on a white couch in a modern office. He is looking at a laptop on a wooden stand and writing in a notebook. The office has large windows in the background.

Elective Share

Purpose - protects surviving spouse from an unfair will

- Surviving spouse entitled to 30% of real and personal property
- Not automatic
- Must be elected – can override will
- Personal right – cannot be sold

Does not apply to property held by:

- Tenancy by the entirety
- Homestead property

Descent and Distribution

Probate laws:

- Allows property to pass to legal heirs
- Owner dies intestate (without a will)
- No lineal descendants or lineal descendants of both spouses
 - Spouse receives fee simple
- With lineal descendants not from both spouses
 - Spouse receives $1/2$
 - Lineal descendants divide balance of property

Owner dies testate (with a will)

- Laws of descent and distribution do not apply
- Personal representative named in will
 - Verifies that property was distributed according to will





Constitutional Homestead Rights

- **Size**

- Outside municipality - 160 acres
- Inside municipality – Half acre

- **Tax Exemption**

- Up to \$50,000 maximum deducted from assessed value before calculating property tax
- Other exemptions – Chapter 18

- Homestead is a legal life estate for the family
- Homestead property is not protected from forced sale for direct liens such as;
 - Real property taxes
 - Special assessments
 - Mortgages
 - Vendor's liens
 - Construction liens



Exemption from Forced Sale





Condominiums, Cooperatives and Time Shares

DBPR Regulates via:

- The Division of Florida Condominiums, Timeshare, and Mobile Homes
- Real estate license require to sell or lease
- Owners purchase an individual unit (cube in the sky) in a multi-unit building
- Owners have title to airspace within the walls of the unit
- Includes a Tenancy in Common ownership for common areas

Condominiums

- **Main documents**
 - **Declaration (master deed)**
 - Creates the condominium and provides for individual ownership of units)
- **Articles of Incorporation**
 - Establishes the condo association as a legal entity
- **By-Laws**
 - Describes administration and management of the property





Condominiums

- Main documents (cont)
 - **Rules of the Association**
 - Assessment shares, etc.
 - **Question and Answer Sheet**
 - Provides buyers with answers to common questions



Condominiums

- Rescission Period
 - **15** days receipt from developer
 - **3** business days for resale

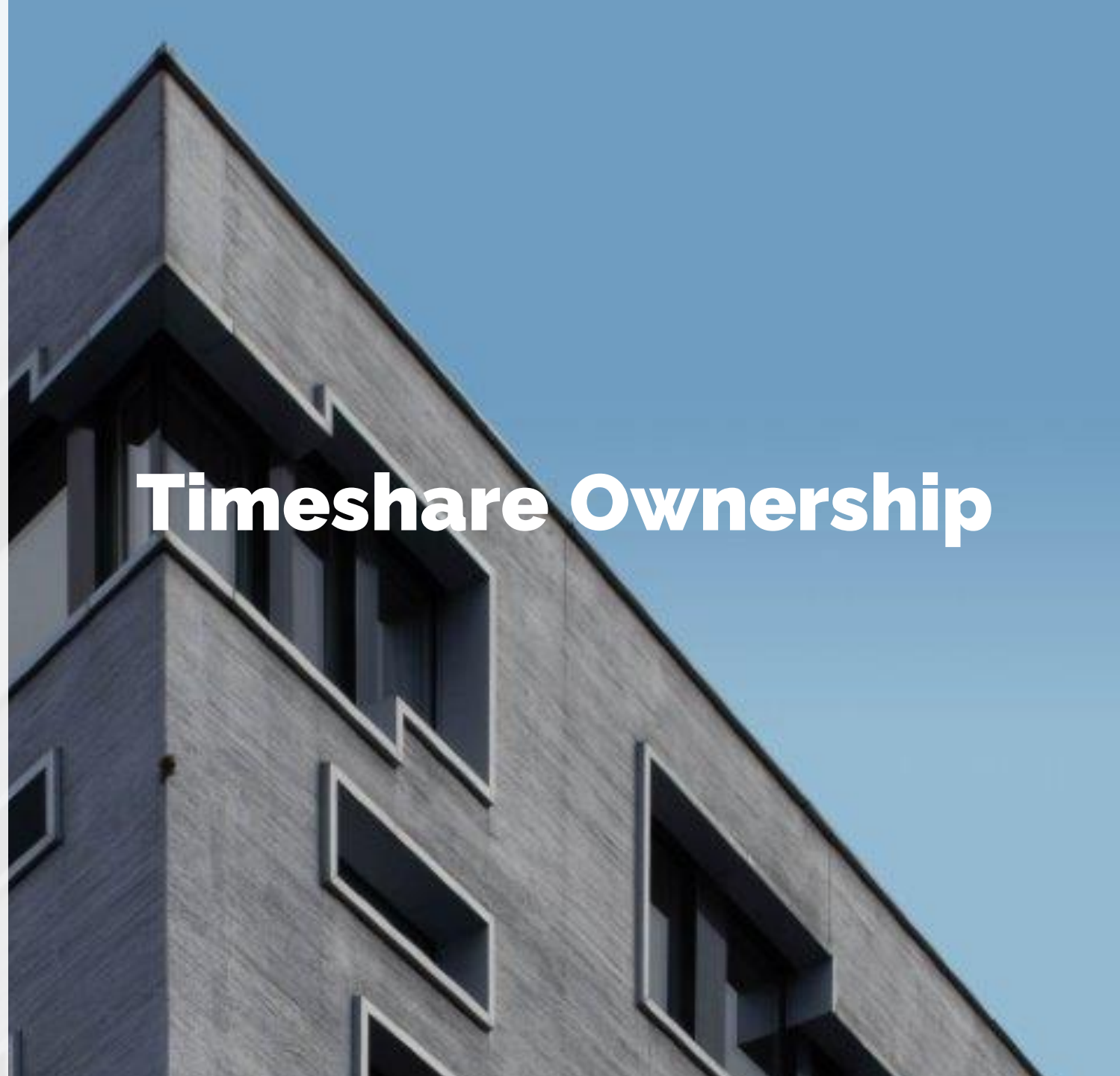
A low-angle, upward-looking photograph of several modern skyscrapers with glass facades, creating a sense of height and urban density. The buildings are dark against a light, hazy sky.

Cooperative Association

- **Title is held by a Corporation**
 - Owners receive shares of stock instead of real estate
 - Owners receive a **proprietary lease**
 - Enjoy same benefits as if they owned unit
 - Real estate tax deductions
 - Equity buildup as master mortgage is paid down
 - Appreciation in property – stock value goes up
- Rescission Period
 - **15** days for New
 - **3** business days for resale

- Condominium divided into time segments (usually weeks)
- The 2 forms of time-sharing are
 - **Interval Ownership** - fee simple ownership (best)
 - **Right-To-Use** - temporary in nature
- Rescission Period
 - **10** days for new
 - **10** days for resale

Timeshare Ownership



Homeowners Association(HOA)

- Seller must provide HOA documents to Buyer
- Buyer has 3 days to review after receipt
- HOA membership is mandatory
- HOA can impose assessments that become liens



HOA
F.S. 720



Coffee Break

15 Minutes